IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2152 OF 2005

Mr. Parpati Ramchand Advani
and ors. ...Applicants.

V/s

Mr. Nitin Shashidhar Dalvi
and ors. ...Respondents.
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Mr. Dinesh Tiwari for the applicants.
Mr. Vaidehi Mhaispurkar for respondent No.1.
Mr. S.R. Shinde, APP for the State.
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CORAM: V.M.KANADE,J.

DATE: 20th April, 2005

P.C.:

1. Heard the learned counsel for the applicants.

2. Applicants are challenging the order of issuance of process passed by the J.M.F.C., Kalyan on a complaint filed by the complainant - respondent No.1 herein under section 138 of the Negotiable Instruments Act.

3. It is submitted that the complaint does not disclose any specific role of the applicants. It is submitted that the applicants are very sick, virtually handicapped old ladies who were neither Directors at the relevant time nor signatories to the said cheques and, therefore, process issued against them were

liable to be recalled. It is submitted that form 32 does not disclose that applicant Nos. 1 and 2 were Directors at any time of the accused - Company. It is further submitted that the complaint is not signed by the complainant but is signed by the Constituted Attorney.

4. It is not possible to accept the submissions made by the learned counsel appearing on behalf of the applicants. I have perused the complaint which is filed by respondent No.1. There are specific averments made in paragraph Nos. 2 and 3 of the complaint in which it is alleged that the accused are in charge of day-to-day business of accused No.1 - Company and that they are managing and looking after the entire business of accused No.1. Further particulars have been mentioned in paragraph Nos. 3, 4 and 5 of the complaint. Thus, the submissions made by the learned Counsel that there are no averments cannot be accepted. There is no merit in the submissions made by the learned counsel appearing on behalf of the applicants. All the questions raised by the applicants in this application cannot be decided at this stage by this Court while exercising inherent powers vested in it under section 482 of the Criminal Procedure Code as these are the questions of fact

which can only be decided by the trial court after evidence is adduced by both parties.

5. Criminal Application is accordingly dismissed.

V.M. KANADE, J.